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*Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108*

Advisory Opinion

July 23, 2001
AO-01-17

Coleen Burgess, Finance Director
The Shannon O'Brien Committee
P.O. Box 8914
Boston, MA 02114

Re: Clean Elections Law – Receipt of qualifying contributions

Dear Ms. Burgess:

This letter is in response to your June 21 request for an opinion regarding the Clean Elections Law, M.G.L. c. 55A.

The Clean Elections Law states that participants must raise qualifying contributions before becoming eligible to receive clean election funds.¹ A qualifying contribution is an allowable contribution of \$5 to \$100 made to a participant during the qualifying period from a registered voter, which is accompanied by a statement signed by the contributor indicating that he or she wishes the recipient to be eligible for public funds. Among other requirements specified in the statute, section 4(b) of chapter 55A states that “[n]o person shall make or give any payment, gift or anything of value in exchange for a [qualifying] contribution.”

You have stated that the Shannon O'Brien Committee (the Committee) is contemplating holding fundraising events at which qualifying contributions will be collected. You have asked whether, in the following circumstances, “anything of value” would be considered to have been given in exchange for a qualifying contribution:

- (1) The Committee registers a contributor to vote at the time a contribution is received.

¹ A candidate who files a Declaration of Intent and becomes a participant in the Clean Elections program must, before becoming certified and receiving monetary distributions under chapter 55A, raise at least the minimum number of qualifying contributions specified in the statute. See M.G.L. c. 55A, §§ 3 and 4 and 970 CMR 5.08.

- (2) The Committee rents a hall for a rally, even if refreshments would not be served to persons attending and making contributions.
- (3) The Committee rents a hall for a rally, and provides refreshments to persons who attend.

If serving refreshments might be considered something of value, you have asked at what point would serving the refreshments be within the scope of that definition. For example, would providing chips and soda be providing something of value?

Each of these questions relates to a broader issue, the definition of the phrase “anything of value” as used in section 4(b) of chapter 55A, and also a determination of when a contribution is given “in exchange” for something of value. I have not attempted to set forth an answer to each question in the form and order you have presented them, choosing instead to address the larger issue and to allow my answers to your individual questions to be included in the following discussion.

Section 4(b) of chapter 55A does not define “anything of value” or “in exchange.” Although not defined, the meaning of the provision may be derived from considering its underlying purpose as well as the common meaning of the words themselves. The purpose of section 4 appears to be the establishment of a threshold to demonstrate a minimum level of support not conditioned on payments, gifts or other things of value being received from a candidate. “Exchange” means “to give in return for something received.” The American Heritage College Dictionary, 3d Edition, 1997.

Based on the purpose of the provision and the meaning of the terms used, a contribution should be considered to be given “in exchange” for something of value if the contribution would not have been made “but for” the providing of the thing of value to the contributor. For example, a contribution could not be used as a “qualifying contribution” if a candidate’s committee holds a fundraising event and provides a T-shirt, mug or \$5 gift certificate to each person who attends and makes a contribution. Each of these items is something of value given in exchange for a contribution.²

The question becomes more difficult if a committee provides contributors with food or refreshments. In such circumstances, if the value of the food or refreshments might reasonably be seen as sufficient inducement to make the contribution, contributions received could not be used as qualifying contributions.

To understand the meaning of “anything of value” in the context of food or refreshments, it is helpful to refer to the definition of “contribution” in section 1 of chapter 55, which defines “contribution” to include “anything of value” given to a candidate for the purpose of influencing the candidate’s nomination or election. Section 1 further defines the term “contribution” to exclude “the exercise of ordinary hospitality,” a term which the office has previously defined to mean “the common, average or unexceptional reception and/or entertainment of guests.” See AO-93-17 (also stating that ordinary hospitality “refers not to hospitality that might be customary for a particular individual but refers to a generally accepted level of hospitality”). Consistent with this definition, the office has advised that if a host provides coffee and donuts or cheese and crackers at a house party for a candidate such items do not constitute a “contribution” to the candidate.

Similarly, if the provision of food or refreshments to contributors is consistent with the exercise of ordinary hospitality, the contributions received in connection with the event could, generally

² Merely renting a hall for an event or registering contributors as voters would not involve the provision of something of value to contributors.

speaking, be considered qualifying contributions. In such circumstances, the food or refreshments have not been provided in exchange for qualifying contributions. Therefore, if light refreshments such as cheese and crackers are served to persons making contributions, we would not conclude that such contributions have been, at least in part, in exchange for the refreshments. Accordingly, such contributions would be considered qualifying contributions.

In contrast, if a committee were to provide meals to contributors, the office would consider the contributions to have been made, at least in part, in exchange for the meal. As such, they would not be considered qualifying contributions.

This opinion is issued within the context of the Clean Elections Law and is provided solely on the basis of representations in your letter and conversations with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS/gb